



Indiana Department of Education

SUPPORTING STUDENT SUCCESS

MEMORANDUM

TO: Title III Program Administrators

FROM: Alyson Luther, Title III Director

DATE: April 15, 2011

SUBJECT: Title III Supplement vs. Supplant Guidance

In order to support preparations for your 2011-12 Title III grant, please find attached the Federal Title III Supplement vs. Supplant guidance. We strongly encourage all Title III Program Administrators to review the guidance carefully as it will be strictly enforced beginning with the 2011-12 school year grant cycle.

As you are aware, Title III funds must be used to supplement the level of Federal, State and local funds that, in the absence of Title III funds, would have been expended for programs for limited English proficient (LEP) students and immigrant children and youth. This includes meeting the requirements of the Federal Case Law, *Lau v. Nichols*, 414 U.S. 563, 1974. *Lau v. Nichols* states:

- “There is no equity of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”
- “Where inability to speak and understand the English language excludes national origin minority children from effective participation in the education program, the school district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.”

To determine if supplanting has occurred under Title III, the USDOE uses two “tests” or “assumptions.”

This first test for supplanting is based on the Department’s assumption that an LEA would use State, local, or other Federal funds to provide services that it is required to provide by State, local laws, or other Federal law. Therefore, it would violate the supplement not supplant requirement if an LEA uses Title III funds for services it is required by law to provide.

The second test is called “prior years.” The Department assumes supplanting exists if an LEA uses Title III funds to provide services that it provided in prior years with State, local, or other Federal funds. This second test can be rebutted. To refute the “prior years” test of supplanting, the LEA would need to have contemporaneous records to confirm:

- Budget cuts were made in a number of areas, not just services for LEP students; and,
- There was in fact a reduced amount of State or local funds to pay for this activity/position; and
- The LEA made the decision to eliminate the position/activity without taking into consideration Federal funds.

Please also note in the attachment that the two percent cap on administrative costs will also be strictly enforced.

Your dedication to the children of Indiana is appreciated. Any question may be addressed to Alyson Luther, Title III Director, at aluther@doe.in.gov.